

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

STEVE STEWART, LAMONT BULLOCK,  
NATHAN RILEY, and DERRICK  
MUCHINSON,

Plaintiffs,

v.

JEFFREY BEARD, JOHN PALAKOVICH,  
JAMES FOUSE, and WILLIAM FELTON,

Defendants.

NO. 3:07-CV-1916

(JUDGE CAPUTO)

(MAGISTRATE JUDGE SMYSER)

**MEMORANDUM**

Presently before the Court is Magistrate Judge J. Andrew Smyser's Report and Recommendation ("R&R") of December 10, 2007 (Doc. 19). The R&R recommends that Plaintiff Derrick Muchinson be dismissed from the action, as he failed to file the proper *in forma pauperis* forms in connection with this action. On December 26, 2007, the Court received a letter from Plaintiff Muchinson, which states that he is "still in the hole," and that he "remember[s] I submitted my Forma Pauperis." The Court will construe this letter as a timely filed objection to the R&R.

Where objections to the magistrate judge's report are filed, the Court must conduct a *de novo* review of the contested portions of the report, *Sample v. Diecks*, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989) (citing 28 U.S.C. § 636(b)(1)(c)), provided the objections are both timely and specific, *Goney v. Clark*, 749 F.2d 5, 6-7 (3d Cir. 1984). In making its *de novo* review, the Court may accept, reject, or modify, in whole or in part, the factual findings or legal conclusions of the magistrate judge. See 28 U.S.C. § 636(b)(1); *Owens*

*v. Beard*, 829 F. Supp. 736, 738 (M.D. Pa. 1993). Although the review is *de novo*, the statute permits the Court to rely on the recommendations of the magistrate judge to the extent it deems proper. See *United States v. Raddatz*, 447 U.S. 667, 675-76 (1980); *Goney*, 749 F.2d at 7; *Ball v. United States Parole Comm'n*, 849 F. Supp. 328, 330 (M.D. Pa. 1994). Uncontested portions of the report may be reviewed at a standard determined by the district court. See *Thomas v. Arn*, 474 U.S. 140, 154 (1985); *Goney*, 749 F.2d at 7. At the very least, the Court should review uncontested portions for clear error or manifest injustice. See, e.g., *Cruz v. Chater*, 990 F. Supp. 375, 376-77 (M.D. Pa. 1998).

Plaintiff Muchinson's objection states that he is sure that he submitted the proper forms for the *in forma pauperis* application. However, the Court has no record of the forms. In light of the objection, the Court will grant Plaintiff Muchinson's objection, and will order him to file the proper *in forma pauperis* forms with the Court within thirty (30) days.

An appropriate Order follows.

December 27, 2007  
Date

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge

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**ORDER**

**NOW**, this 27th day of December, 2007, upon review of Magistrate Judge J. Andrew Smyser's Report and Recommendation (Doc. 19), **IT IS HEREBY ORDERED** that:

1. Plaintiff Derrick Muchinson is to **FILE** the proper *in forma pauperis* forms within thirty (30) days of this order.
2. The case is **RECOMMITTED** to Magistrate Judge Smyser for further proceedings.

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge